



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of: )  
)  
) ISCR Case No. 11-02200  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Melvin A. Howry, Esq., Department Counsel  
For Applicant: *Pro se*

July 13, 2012

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a 54-year-old employee of a defense contractor. He is indebted to 22 creditors in the approximate amount of \$102,610, raising concerns under the guideline for Financial Considerations. He also committed a series of rule-breaking incidents that showed poor judgment and raised security concerns under the guideline for Personal Conduct. Applicant failed to mitigate the Financial Considerations and the Personal Conduct security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On February 23, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations and E, Personal Conduct. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective September 1, 2006.

Applicant answered the SOR on March 17, 2012, and requested a hearing before an administrative judge. The case was assigned to me on May 17, 2012. DOHA issued a notice of hearing on May 17, 2012, scheduling the hearing for June 19, 2012. The hearing was convened as scheduled. The Government offered Exhibit (GE) 1 through GE 11, which were admitted without objection. Applicant testified on his own behalf and presented Applicant Exhibits (AE) A through D, which were also admitted. The record was left open for Applicant to submit exhibits and on June 22, 2012, and June 29, 2012, Applicant presented two emails that I have marked AE E and AE F. Department Counsel had no objections to Applicant's post-hearing documents and they were admitted. DOHA received the transcript of the hearing (Tr.) on June 27, 2012.

### **Procedural Ruling**

At the hearing on June 19, 2012, Department Counsel made a motion to amend the SOR in order to conform to the evidence, pursuant to Directive ¶ E3.1.17. Applicant had no objections to the amendment and the motion was granted. (Tr. 63-64.) The amendment changed the dollar amount alleged in SOR ¶ 1.u from \$185,000 to \$28,603. The allegation, as amended, reads:

1.u. You are indebted to [creditor] for an account placed for collection by [creditor] in the approximate amount of \$28,603. As of the date of this Statement of Reasons, it remains unpaid.

### **Findings of Fact**

Applicant admitted SOR allegations 1.a through 1.o, 1.q through 1.t, 1.v, 1.w, 2.c, and 2.d. He denied SOR allegations 1.u, 2.a, and 2.b. Allegation 1.p was omitted in the SOR. He failed to admit or deny allegation 2.e., which referenced the information set forth under the first paragraph of the SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 54 years old. He held a security clearance during the 1980's, while working for a government contractor. He is currently unemployed, but has been offered a position with a government contractor if he can obtain a security clearance. He has been married for 19 years and has four adult children. (GE 4; Tr. 32-33, 39-40, 42.)

Applicant's credit reports from October 19, 2010; November 3, 2011; March 31, 2011; and June 12, 2012; and his answers to interrogatories, show that Applicant was indebted to 21 creditors in the amount of \$74,007;<sup>1</sup> as alleged in SOR ¶¶ 1.a, through 1.o, 1.q through 1.t, and 1.v. He failed to present any documentation that he is repaying any of his delinquent accounts. Of his delinquent accounts, Applicant is responsible for the following unsatisfied bad debts owed for consumer goods, services, and credit card purchases: SOR ¶¶ 1.a (\$1,003); 1.m (\$2,081); 1.n (\$3,318); 1.o (\$2,664); 1.q (\$11,311); 1.r (\$1,591); 1.s (\$2,665); and 1.t (\$3,956). Applicant owes the creditors alleged in SOR ¶¶ 1.b through 1.l a total of \$11,581 on unpaid medical accounts for the

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<sup>1</sup> Applicant's total indebtedness of \$102,610 was calculated by adding the 21 debts totaling \$74,007 to his remaining mortgage debt of \$28,603, discussed below.

treatment of his daughter after an accident. He provided documentation that has settled and repaid other medical debts, but acknowledged that these medical debts are still outstanding. (GE 6; GE 7; GE 8; GE 9; GE 11; AE F; Tr. 41-66.)

Additionally, Applicant is alleged to be indebted on his home mortgage totaling \$185,000, in SOR ¶ 1.w. Applicant testified that he only had one mortgage and it was originally for \$185,000. However, the home was foreclosed upon in November 2009. He submitted a document entitled "Trustee's Deed Upon Sale" that indicated his home was resold for \$146,387.82. Applicant no longer owes the full original debt as alleged in SOR ¶ 1.w. Instead, Applicant owes approximately \$28,603 on this debt after the foreclosure sale, as alleged in SOR ¶ 1.u, as amended. (GE 9; GE 11; AE F; Tr. 34-35, 61-67.)

Applicant's financial difficulties are directly attributable to his unemployment from March 2009 to the present. Applicant's employment was terminated when he intentionally drove a forklift into a table, causing it to bump into and injure a co-worker, as alleged in SOR ¶ 2.c. Because Applicant was terminated due to misconduct, he was not eligible to receive unemployment compensation. He has remained unemployed, except for a brief six-week temporary job in October 2009, until the present. He currently has no earned income. His wife does not work due to a back injury. Applicant and his wife are currently supported by Applicant's sister, who manages a trust fund for their family's use. He does not know how much is left in the trust fund. He testified that he has no funds available to repay his delinquent accounts. He intends to repay his debts once he is gainfully employed. (GE 2; GE 8; Tr. 43-66, 68-75, 88-91.)

In 2005, prior to Applicant's termination, he was reprimanded with a written warning from his employer for failing to properly record his time, spending work time on personal matters, and insubordination, as alleged in SOR ¶ 2.a. Applicant testified that he had a new "lead man" at work, who was offended that Applicant had requested a transfer to another work location. He felt the lead man singled him out for punching the time clock in a different work area and for not being available immediately when he was requested to perform a task. As a result of this written warning, Applicant was not awarded a holiday bonus. (GE 8; Tr. 35-36.)

On June 24, 2007, Applicant was charged with resisting arrest, delay, and obstructing a peace officer, as alleged in SOR ¶ 2.b. Sheriff department records show that on June 24, 2007, officers responded to an emergency request for medical aid made by Applicant's wife, caused by her back pain. Applicant's wife was found by the responding officers on her back in the front yard. Applicant approached the officers and told them to "get off [his] property." Applicant appeared angry and had clenched fists. Officers requested that Applicant step away. Instead, he advanced toward the officers, again requesting that the officers leave. Fearing for their safety, the officers forced Applicant to the ground and arrested him. Applicant, however, recalls the arrest differently. He testified that a few months prior to this incident, local officers beat up his son. As a result, he was weary of all officers. He "asked them nicely to leave" but they did not. He indicated he asked the officer for his business card, but the officer "got very irate." He indicated he tried to turn around and go in the house, but the officers "threw

[him] to the ground and arrested [him].” Applicant testified that the charges against him were never filed with the court. (GE 1; GE 5; Tr. 31-34, 36, 79-84.)

In January 2010 Applicant was cited with failure to obey school attendance board, as alleged in SOR ¶ 2.d. His youngest child, who was then 16, was skipping school. He was found guilty of failure to obey school attendance board and sentenced to enroll his daughter in school and attend one day of school with her. He was unable to comply with the court order, because his daughter took and passed a high school equivalency exam that meant she no longer had to enroll in school. A bench warrant was issued for Applicant’s arrest when he failed to attend school, but it was recalled after Applicant explained to the court that his daughter had passed the equivalency exam. Applicant paid a fine of \$50. (GE 3; Tr. 37-38, 75-79.)

Applicant is well respected by former co-workers, a former supervisor, and friends who wrote letters of support on Applicant’s behalf. His former supervisor noted “I have never questioned his honesty, integrity or ethics.” Applicant is also actively involved in his community. He is the president of a club, of which he is a member. (AE A; AE B; AE C; AE D; AE E; Tr. 40.)

### **Policies**

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant’s eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel.” The

applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline F, Financial Considerations**

The security concerns for Financial Considerations are set out in AG ¶ 18, as follows:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are established by the evidence in this case:

- (a) Inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

From 2009 to the present, Applicant accumulated a significant amount of delinquent debt. During that time, he has been unable to adequately address his debts. He has no earned income at this time. The Government established a *prima facie* case for disqualification under Guideline F.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's financial difficulties are recent and on-going. He failed to satisfy any of the debts listed on the SOR. Applicant's debts are attributable to his unemployment; however, his unemployment was not a circumstance beyond his control. He lost his job after intentional misconduct that caused injury to another employee. Further, he failed to establish that he has been acting responsibly under the circumstances. He failed to provide evidence that he has received counseling, or to show that his financial problems are being addressed. Without any income, Applicant cannot resolve his delinquent accounts. Only SOR ¶ 1.w, which was resolved involuntarily through foreclosure, has been addressed, and \$28,603 remains owing on that delinquent mortgage debt (as set out in SOR ¶1.u). None of the above-listed mitigating conditions apply.

### **Guideline E, Personal Conduct**

The security concerns for the Personal Conduct guideline are set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information; and

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information;

(2) disruptive, violent, or other inappropriate behavior in the workplace;

(3) a pattern of dishonesty or rule violations;

(4) evidence of significant misuse of Government or other employer's time or resources.

Applicant exercised poor judgment on multiple occasions under many different circumstances. He has acquired excessive debt that he is unable to repay. He has injured a coworker, violated workplace policies regarding time recording, and was insubordinate to a superior. His actions led to his termination. He was arrested after confronting police officers on his property who were there to check on the well-being of his wife. He was also cited for his failure to have his daughter attend school. These diverse instances of poor conduct show Applicant has a history of poor judgment, inappropriate workplace behavior, and rule violations. AG ¶ 16(c) and 16(d) are applicable as a disqualifying condition.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is

unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

In this instance, Applicant's multiple episodes of irresponsibility and poor judgment occurred over a seven year time frame beginning in 2005 and continues today, through the failure to satisfy his delinquent accounts. Not enough time has passed to safely predict Applicant will avoid questionable decisions in the future. He failed to produce evidence that he participated in any type of counseling or rehabilitation. His reliability, trustworthiness, and judgment are still in question and he has not demonstrated positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress. No mitigating conditions apply.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant, a mature man, has demonstrated questionable judgment over a number of years on many different occasions. While he is well respected by former co-



workers, a former supervisor, and friends, it is unclear from their letters whether each knows of the scope of Applicant's financial problems and lapses in judgment. He has debts owed to 22 creditors in the approximate amount of \$102,610, which he has failed to adequately address.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the Financial Considerations or the Personal Conduct security concerns.

### Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	Against Applicant
Subparagraph 1.s:	Against Applicant
Subparagraph 1.t:	Against Applicant
Subparagraph 1.u:	Against Applicant
Subparagraph 1.v:	Against Applicant
Subparagraph 1.w:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant
Subparagraph 2.d:	Against Applicant
Subparagraph 2.e:	Against Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Jennifer I. Goldstein  
Administrative Judge